

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

JUNE -8 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2006-0417-PR
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
DANNY WEST,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR95-325

Honorable Rubert Duber, II, Judge

REVIEW GRANTED; RELIEF DENIED

Danny West

Florence
In Propria Persona

B R A M M E R, Judge.

¶1 For having had intercourse and other sexual contact with his fourteen-year-old stepdaughter, petitioner Danny West was convicted of child molestation and sentenced in 1996 to an aggravated prison term of 18.5 years. We affirmed his conviction and sentence on appeal in *State v. West*, No. 2 CA-CR 96-0420 (memorandum decision filed Nov. 26,

1997). He has twice previously sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., in 2001 and 2002.

¶2 In his second notice of and petition for post-conviction relief filed in December 2002, West claimed his aggravated sentence had been imposed in violation of *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000), and *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428 (2002), because the factors used to aggravate his sentence had not been found by a jury. West thus invoked, although he did not cite, *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). The trial court denied relief summarily in August 2003. In June 2006, West filed another *pro se* petition for post-conviction relief, again claiming he should be resentenced because the trial court improperly relied on sentencing factors not proven to a jury beyond a reasonable doubt.

¶3 After the state filed a response, the trial court held oral argument before dismissing West's latest petition on the ground that *Blakely* does not apply and West was entitled to no relief. The ruling was legally correct, and the trial court did not abuse its discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990) (trial court's grant or denial of post-conviction relief reviewed for abuse of discretion). West's conviction became final in 1998 with the issuance of our mandate on appeal. *See State v. Febles*, 210 Ariz. 589, ¶ 9, 115 P.3d 629, 633 (App. 2005) (case is final on date mandate issues); *see also State v. Sepulveda*, 201 Ariz. 158, n.2, 32 P.3d 1085, 1086 n.2 (App. 2001). *Blakely*

was not decided until June 2004 and does not apply retroactively to cases that were already final when the decision was announced. *See Febles*, 210 Ariz. 589, ¶ 17, 115 P.3d at 635.

¶4 Finding no abuse of the trial court's discretion, we grant the petition for review but deny relief.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

PHILIP G. ESPINOSA, Judge